SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 486

LESTER FOLLETT, APPELLANT,

vs.

TOWN OF McCORMICK, SOUTH CAROLINA

APPEAL FROM THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

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[fol. 1]

IN THE SUPREME COURT OF SOUTH CAROLINA

TOWN OF MCCORMICK, Respondent

vs.

LESTER FOLLETT, Appellant

STATEMENT ON APPEAL

This is a criminal action commenced on the 20th day of March 1942, by the town of McCormick against the appellant Lester Follett for the alleged offense of Selling or Offering to Sell Books in the Town of McCormick without a license, and was tried before the mayor of said town and a jury on the 21st day of March 1942. Appellant was convicted and was sentenced by the mayor to pay a fine of Fifty Dollars or serve twenty days in the city jail. He appealed to the circuit court where the appeal was heard on the 6th day of October, 1942, by the Hon. E. C. Dennis, presiding judge, who took the matter under advisement and on the 2nd day of November, 1942, filed an order affirming the judgment below. In due time appellant served notice of intention of appeal, and does now appeal, to the Supreme Court from the said order and from the judgment thereon.

The appellant contended that he was and is a regularly ordained minister of the Gospel working as such under the auspices of the Watchtower Bible & Tract Society, 117 Adams Street, Brooklyn, New York, an organization duly chartered under the laws of the state of New York, for the purpose of disseminating and preaching the gospel of God's Kingdom under Christ Jesus, by word of mouth, by the printed page, and otherwise. Appellant contended that as a part of his duties as a minister of the Gospel, and incidental thereto, the appellant placed a book appertaining to his faith with one of witnesses for the town, one Flavores Cade, and received from her a contribution of 25c which [fol. 2] contribution was designed to aid in the work in which he was engaged by defraying the cost of printing more books of like kind to be used in the teaching of God's word to others.

There was placed in evidence the credentials of appellant, that is to say, a certificate duly signed by an authorized

officer of the society certifying him to be a duly ordained minister of the Gospel, which certificate is hereinafter set out in full.

He was not represented at the trial by an attorney. At the close of the testimony the appellant made a motion for a directed verdict of not guilty on the ground that the ordinance is in direct violation of the Fourteenth Amendment of the Constitution of the United States in that it restricts the freedom of speech, freedom of the press, freedom of worship of Almighty God; also, on the ground that there was no testimony that he had sold a book.

"Children", the book in question, the booklet, "End of Axis Powers", and "The Watchtower", exhibits in the case, are filed separately.

[Front of Certificate]

This is to certify that Lester Follette whose signature appears below, is an ordained minister of Jehovah God to preach the gospel of God's kingdom under Christ Jesus and that said person is one of Jehovah's witnesses. The Watch Tower Bible & Tract Society, created and organized and chartered by law to preach the gospel of God's Kingdom, sends forth Jehovah's witnesses to do this work as commanded by the Almighty God. Jehovah's witnesses are [fol. 3] ordained and commissioned by God, and the signer of this card Scripturally claims such ordination and commission, as set forth in the Bible at Isaiah 61:1, 2; Isaiah 43:9-12; Matt. 10:7-12; Matt. 24:14; Acts 20:20; 1 Peter 2:21; 1 Cor. 9:16. Being one of Jehovah's witnesses, the signer must obey God rather than men. (Acts 3:23; Acts 4:19; Acts 5:29) Jehovah's witnesses, in obedience to God's commandments, preach the gospel and worship Almighty God by calling upon people at their homes, exhibiting to them the message of the gospel of said Kingdom in printed form. Bibles, books, booklets, and magazines are offered free to those that are poor, or on contribution, which contribution is accepted for the publishing of other literature so that the Word of the Lord may have greater circulation in all this world for a witness, giving other people the opportunity of learning of God's gracious provision for them. Said witness of Jehovah is doing this work of his own volition and is bearing the testimony before the people

in accordance with the provisions of the fundamental laws of this land and in obedience to God's commandment, which is supreme. Any kindness shown this witness of Jehovah will be greatly appreciated and is certain to call forth the blessing of the Lord upon the one showing such kindness. (Matt. 25:31-46) The Society or its appointed representatives will be pleased to furnish authoritative proof as to whether the signer of this card is one of Jehovah's witnesses.

Watch Tower Bible & Tract Society, by N. H. Knorr, President.

Lester Follette, McCormick, South Carolina.

[fol. 4] [Back of Certificate]

Today many are in perplexity as to what to do to protect and safeguard the interests of themselves and their children. The remedy for the present unhappy condition is the rule of the earth by righteous powers. God has made it possible to now learn just how and when such righteous rule will come into full control.

The great and comforting truths in the Bible are set forth in the book entitled Children. It contains instructions for all who would be children and subjects of the great Lord and King Christ Jesus. It is not religious, but fills the sincere heart with contentment and hope. It is not a child's book, but is for adults and children as well. Here is a copy for you, and you may contribute twenty-five cents to help publish more like books.

Read Children, rejoice and live.

[fol. 5] In Mayor's Court of Town of McCormick

Statute Involved

Be It Ordained by the Town Council of the town of McCormick in council assembled, and by the authority of the same.

Section—That the following license on business, occupation and professions to be paid by the person or persons carrying on or engaged in such business, occupation or pro-

fessions within the corporate limits of the Town of McCormick, South Carolina:

Agents selling books, per day $1.00, per year $15.00.

Following all the evidence the defendant made a motion for a directed verdict, which is as follows:

IN THE MAYOR'S COURT OF THE TOWN OF McCORMICK

MOTION FOR DIRECTED VERDICT

The defendant moves for a directed verdict on the grounds:

(1) That there is no testimony that he had sold or offered for sale a book within the Town limits of the Town of McCormick.

(2) That the Ordinance requiring the defendant to secure a license is in direct violation of the 14th Amendment of the Constitution of the United States in that it restricts the freedom of speech, freedom of the press and the freedom of worship of Almighty God.

Wherefore defendant prays that this Court enter a judgment discharging the defendant upon a finding of "not guilty".

[fol. 6] IN THE MAYOR'S COURT OF THE TOWN OF McCORMICK

TESTIMONY

The following is a statement of T. J. Sibert, mayor, who tried the case concerning part of the evidence heard by him:

Lester Follett testified that the books he had were shipped to him by Jehovah's witnesses, that when he disposed of the books he paid for the books. He further testified that he obtained his living from the money received from those with whom he placed books, that he had no other source of income.

The following is substantially the testimony given by Lester Follette in his own behalf:

My name is Lester Follett. I live in McCormick, South Carolina. I am a regular ordained minister and fully consecrated to do the will of Almighty God as set forth in the

following texts: "Ye are my witnesses saith Jehovah that I am God". (Isa. 43:10-12) "The spirit of the Lord God is upon me because the Lord hath anointed me to preach good tidings unto the meek, he hath sent me to bind up the broken-heatred, to proclaim liberty to the captives and the opening of the prison to them that are bound, to proclaim the acceptable year of the Lord and the day of vengeance of our God, to comfort all that mourn." (Isaiah 61:1, 2) "And this gospel of the kingdom shall be preached in all the world for a witness unto all nations and then shall the end come." (Matt. 24:14) As the apostles were sent forth by the Lord Jesus Christ so I am sent forth. They went from house to house preaching the gospel orally; I am doing so by going from house to house presenting the gospel of [fol. 7] the kingdom in printed form. I am called to follow in the footsteps of Jesus, for even hereunto were ye called for Christ also suffered leaving us an example, that ye should follow in his steps. (2 Pet. 2:21) I here offer in evidence a card containing a certificate of ordination, also a testimony. I was not selling. I was placing the books on a contribution.

IN THE MAYOR'S COURT OF THE TOWN OF MCCORMICK

NOTICE AND GROUNDS OF APPEAL

To T. J. Sibert, Esq., Recorder of the city of McCormick, and to J. Fred Buzhardt, Attorney for said city:

Please Take Notice that the defendant above named intends to and does hereby appeal to the Court of General Sessions for McCormick County, from judgment of conviction entered against him March 21st, 1942, by said recorder, upon the ground that the recorder erred in not sustaining defendant's motion to dismiss, on the ground that the ordinance is in direct violation of the Fourteenth Amendment of the Constitution of the United States, in that it restricts the freedom of speech, freedom of press, and freedom of worship of Almighty God; the same being a good and valid objection to the ordinance upon which said warrant or complaint is based, for the reasons stated in said motion to dismiss, which is incorporated herein, the same as if here repeated at length; in not sustaining defendant's motion to direct the verdict; and in not dismissing said charge against the defendant.

[fol. 8] IN THE CIRCUIT COURT OF GENERAL SESSIONS FOR McCORMICK COUNTY

MAYOR'S RETURN

Lester Follett was arrested in the Town of McCormick and charged with voilating one of the Town ordinances in that he sold or offered to sell within the Town limits of the town of McCormick certain books on two different dates without having obtained a license to sell books.

When the case was called, the defendant, Follett, pleaded not guilty and demanded a jury trial. His request was granted and a number of witnesses testified on behalf of the town, that on the dates charged, the defendant, Follett, offered to and did sell books entitled "Children" within the town limits of the town of McCormick. The defendant, Follett, testified in his own behalf; he denied selling books but testified that he had distributed literature on the dates mentioned in the town of McCormick and had left books with people who would "make a contribution" to him of twenty-five cents. The witnesses for the town testified that no mention of a contribution was made but that the defendant offered to and did sell the books. It was testified on behalf of the town that the defendant had failed and refused to obtain a license from the town clerk as required by town ordinance; this the defendant admitted. At the close of the testimony, the defendant moved for a directed verdict of not guilty, on the grounds that the ordinance was in violation of the United States Constitution in that it restricted the freedom of worship. This motion was overruled and the defendant was found guilty by the jury. He was sentenced [fol. 9] by the court on each charge to pay a fine of $50.00 or be imprisoned, or work on the county chain gang for a period of twenty days.

Within due time notice of appeal was given, the notice being attached to this statement, and the defendant was admitted to bail.

IN THE CIRCUIT COURT OF GENERAL SESSIONS FOR McCORMICK COUNTY

OPINION AND ORDER—November 2, 1942

The defendant above named was convicted by a jury in the Mayor's Court of the City of McCormick of a violation

of an ordinance of the city in that he sold within the limits of the city certain books without having obtained a license to sell the books.

The ordinance provided that a license must be procured before carrying on certain kinds of business and among the requirements was an agent selling books. The ordinance provided that an agent selling books should pay a license before offering to sell or selling books. It is not in dispute that the defendant had not paid the license. The defendant claims that the books were not sold by him but would be left with any one contributing the sum of twenty-five cents. The witnesses for the Town testified that nothing was said about contribution that the books were sold to them for the sum of twenty-five cents each. At the close of the testimony the defendant moved for a directed verdict on the ground that the ordinance was in violation of the Constitution of the United States in that it restricted the freedom of worship. His motion was refused and the jury found him guilty. He then appealed to this Court on the ground that the Mayor erred in not sustaining de- [fol. 10] fendant's motion to dismiss on the ground that the ordinance is in direct violation of the Fourteenth Amendment of the Constitution of the United States in that it restricts the freedom of speech, the freedom of press and freedom of worship of Almighty God. The defendant claims that he was an ordained minister but the only evidence of his being ordained was a certificate of the Watchtower Bible and Tract Society by its president. As I understood his claim it is that he was ordained a minister by God himself and is sent forth by the Watchtower Bible and Tract Society as their representative. That is what appears from the certificate which he introduced in evidence to show that he is a minister.

The defendant testified that the books were shipped to him by the Society, that when he disposed of the books he paid for them. He further testified that he made his living from the money received from those with whom he placed the books, that he had no other source of income. The book he sold has the title "Children". The claim is that the book is not a child's book and a reading of the book shows definitely that it is not capable of being understood by a child but appears to be a name given the book for the purpose of concealing what it really is.

The claim is that the book is a religious one and therefore not subject to the requirement that a license be paid. To show that the book is not religious on Page 207 there is this statement: "Religious organizations furnish no protection whatsoever to the people. Religion is entirely contrary to [fol. 11] the will of God and is a snare. Today religion is fully united with dictators or arbitrary rulers of the earth". On Page 227 this quotation: "In modern times the colleges and universities and particularly so-called theological schools teach anything and everything but the Gospel. There are numerous religious denominations which preach their own doctrines". On Page 232: "The message of God's Word necessarily exposes religion as the instrument of Satan used to deceive the people." On Page 258: "Religious ceremonies produce no good results and are in vain and injurious. Religion is heathenish". Page 245: "Religion is demonism". Page 335: "Today the religious organizations have and exhibit a form of godliness and perform ceremonies, claiming to honor God, but in fact they are against God."

It appears from this that the defendant is not in truth a minister but is an agent appointed by the Watchtower Bible and Tract Society and that the book he was selling is not a religious book at all.

At the time he undertook to sell and did sell this book he also distributed copies of a pamphlet entitled "End of Axis Powers". This name is entirely misleading.

The Society is undertaking to defy all government and to set up what they call Theocracy. The Watchtower seems to be undertaking also to oppose all government and to advocate a Theocracy. It is impossible to understand what they mean and it is apparently only an effort to discredit all government now in existence.

[fol. 12] Quoting from this pamphlet "End of Axis Powers" on Page 9:

"The obligation and commission of Jehovah's witnesses is to proclaim the truth of and concerning The Theocracy, which will enable the people to intelligently choose".

Page 10: "The facts are indisputable, and therefore admitted, that the Nazis, Fascists and the mightiest religious organization on earth, acting together and designated as "the Axis Powers", now rule from Norway to Egypt and

within that realm the people mourn. That ruling power is opposed to the Kingdom of God under Christ and violently opposes everyone who advocates The Theocracy".

"Opposing the Nazi, religious combine is another mighty world power, carried on by the political and commercial strong men of those nations, and ably supported by religious leaders. That world power is generally known as the advocate of Democracy, and during the World War from 1914 to 1918 adopted and used the slogan: "This war will make the world safe for democracy". That ruling power does not advocate the kingdom of God and hence is against The Theocracy."

Page 27: "The only hope for peace and life rests in The Theocratic Government. All persons now on earth who expect or hope to live must flee to that righteous government, and all others shall be destroyed."

Quoting from the "Watchtower" of date March 15, 1942, one of the exhibits:

"Hence the conspiracy of the worldly rulers, under the religious guidance of the demonized clergy, to block The [fol. 13] Theocracy and to continue misruling the earth, is a flagrant disregard of God's law and testimony as set forth in the Bible and declared by his witnesses. It is gross iniquity and is abominable in his sight, and it deceives the whole world because it operates under the cloak of religion.

"And the prophets thereof divine for money. The clergy of 'Christendom' divine or make predictions to please the dictators or the political leaders. The political schemes and programs of such they support and make unscriptural promises for them. They turn the people away from the sure and infallible prophecies of God's Word, and speak great things in behalf of the 'new world order,' or the 'new League of Nation'; which proposals of men are opposed to the rule of Jehovah's Theocracy. For all their divination and religious service they expect and eagerly accept money, no matter how filthy the source thereof.

"In the present conflict for world domination the controlling powers of 'the king of the north' and the rival 'king of the south' seek to gain the victory and establish themselves as the capital organization over the new-world federation of nations. According to the prophecies, neither shall win complete victory, and organized religion will deal

with both 'kings,' recognizing both as the 'higher powers,' and will herself seek to dominate them both as a supernational spiritual government. Religion and rulers will allow no place for national spiritual government. Religion and rulers will allow no place for Jehovah's message nor for his Theocracy. Such vain imaginations and wicked [fol. 14] devices shall not stand. Their Final End shall be at God's appointed time, at Armageddon. They are now in their last days, and Jehovah establishes his capital organization in power and glory, and it stands for ever.

"In 1918 Jehovah, figuratively speaking, laid Christ Jesus his King as the 'precious corner stone' in Zion, and defiantly says to all the many antichrists opposing The Theocracy: 'Yet have I set my king upon my holy hill of Zion.' (Ps. 2:6) The 'war in heaven' began at Christ's enthronement in 1914, and in that war Satan and his demon hosts were defeated and cast out of heaven and down to the earth and put under Christ's feet, debased to the position of a footstool.

"It was 'the king of the south' that pushed the League of Nations in 1918-1920, and he now suggests a revival of such League of Nations to secure the expected 'Peace and Safety' and to guarantee the freedoms promised to the people. The Vatican-Nazi-Fascist-totalitarian combine, or 'king of the north', proposes a 'new world order' and has already begun the nucleus of his 'new League of Nations' on the European continent. All such super-governments are the 'hills of the mountains of Christendom'. Prophecy indicates that at the close of the conflict 'the king of the north' and 'the king of the south' will, under the political strategy of the Vatican, come to a compromise agreement and will set up a 'new moral order,' a federated world under a super-government, pictured as the 'scarlet-colored beast' on the back of which there rides religion, the dominant part of which is the Roman Catholic Hierarchy. Today, in the compliance with the sly scheme of that Hierarchy [fol. 15] for world domination, the Catholic and Protestant and Jewish religious organizations hypocritically act out a 'good neighbor' policy. Such religious federation may be expected to do at such future event as the Federation of Churches in America did in 1920, to wit, call the new political-religious world confederation the political realization of the kingdom of the Messiah. So doing, they commit

gross blasphemy and finally and completely reject Jehovah's building of his Theocratic Government under Christ.

"By now millions have heard the good news, and many thousands have joyfully accepted the message, turned their backs on religion, and turned their steps toward the glorious mountain of The Theocracy.

"Concerning the two world-powers fighting each other for world domination, namely 'the king of the north' and the 'king of the south', Daniel 11:27 says: 'They shall speak lies at one table [of the god of this world],' and feed upon the same provender. (1 Cor. 10:21) They ignore God's Word concerning his kingdom and all evidence of the setting up of the same. Imbued with their imperialistic idea, they go on to carry out Satan's purpose in preparing for his final stand to rule the earth, at the battle of Armageddon.

"Among these signs, or 'wonders', done and performed by the two-horned beast may be mentioned, to wit: the establishment by it of the greatest empire of earth, ruling both the land and the sea; the gaining of supremacy in the winning of the World War; the promoting of great re- [fol. 16] ligious missionary movements; the publishing and distribution of millions of Bibles, engineered by the clergy who themselves do not believe the Bible, but which is done to deceive the people into understanding that these nations are Christian; the capture and controlling of the banking power of the world; the capturing of the 'holy city' of Jerusalem in 1917; the taking of the lead in the peace treaties of the world; the supplying of the chief portion of the money for the healing of the wounded head of the 'sea beast' till the rise of Hitler."

It is apparent from these quotations that this man is a member of a band which calls themselves Jehovah's witnesses but that their organization is not religious but is an attempt to set up an earthly government and is opposed to all forms of government as now existing whether autocratic or democratic.

It seems to me clear that the defendant violated the ordinance in that he sold the books which were not religious books and that he is not a religious minister but is some other kind of minister known only to Jehovah's witnesses and without any church or religious organization.

I have undertaken to give this matter considerable attention for the reason that this organization has caused trouble

in a number of counties in this State and it has been taken for granted that this was a religious organization. They maintain an attorney in the city of Atlanta who travels to the different counties of this State for the purpose of arguing the appeals from conviction. It seems to me to be well organized wordly power which is not only not religious but is outspoken in its opposition to religion. The [fol. 17] appellant relied on the case of the State against Meredith 197 SC, Page 351. The facts of this case are so different from that one that I do not think it applicable. The judgment of the Mayor's Court is affirmed.

(Signed) E. C. Dennis, Presiding Judge.

Darlington, South Carolina, November 2, 1942.

In the Circuit Court of General Sessions for McCormick County

Notice of Appeal

To Jeff Griffin, Solicitor of the Eleventh Judicial Circuit, Saluda, South Carolina, and Mr. J. Fred Buzhardt, Attorneys for State of South Carolina and City of McCormick, Plaintiffs-Respondents:

Take notice that the defendant in the above styled action intends to appeal and does appeal from the verdict rendered by the jury in the Recorder's Court, McCormick, South Carolina, and the sentence imposed, and the order of Hon. C. E. Dennis, presiding judge of the Circuit Court, dated November 2, 1942, affirming the judgment of conviction in the Recorder's Court, upon the grounds and exceptions hereinafter to be served upon you.

(Signed) Grover C. Powell, Attorney for Defendant-Appellant.

[fol. 18] Service of the foregoing notice of appeal accepted at McCormick, South Carolina.

This 9th day of December, 1942.

(Signed) J. Fred Buzhardt, Attorney for the City of McCormick.

IN THE CIRCUIT COURT OF GENERAL SESSIONS FOR McCORMICK COUNTY

EXCEPTIONS

The court below erred in its judgment of conviction of defendant upon the following grounds and exceptions hereinafter set forth:

Ground No. One—The court erred in convicting defendant under the commercial ordinance as all the facts show that defendant is a regular ordained minister and his work of distributing the book on a contribution or "sale" was merely collateral to the main purpose in which he was engaged, which was to preach and teach the tenets of his Christian faith and belief, and, therefore, not "peddling", and did not come within the terms of the commercial ordinance governing peddling.

Ground No. Two—The undisputed evidence shows that defendant's activity does not constitute "peddling" within the true meaning of said ordinance and that there was no sale or selling or bartering as those terms are properly defined within the meaning of the law as applied to ordinary commercial transactions because there was no commercial money or profit contemplated by defendant.

Ground No. Three—The ordinance as construed by the [fol. 19] court below to apply to the activity of defendant in preaching the Gospel and distributing literature is unconstitutional and void because as so construed and applied defendant's rights of freedom of press and freedom of worship of Almighty God are abridged and denied contrary to the South Carolina Constitution without equal protection and due process of law.

Ground No. Four—The ordinance in question as construed by the court below to apply to the activity of defendant in preaching the gospel and distributing literature is unconstitutional and void because as so construed and applied it abridges and denies defendant his rights of freedom of press and of worship of Almighty God and is an excessive burden thereon, all contrary to the First and Fourteenth Amendments to the United States Constitution.

Ground No. Five—Because appellant was, and is, a regularly ordained minister of the Gospel and was not engaged

in any commercial transaction but on the contrary was merely engaged in the exercise of his calling as a minister of the Gospel and the distribution of literature was a part of the exercise of his calling as such minister of the Gospel and was incidental thereto, and was therefore expressly exempt by statute from the power of the town to impose a license thereon.

Ground No. Six—Error of the court below in not holding that the arrest, trial, and conviction, of appellant, were void because the prosecution was not based on information [fol. 20] under oath as required by law and because no warrant for arrest of appellant was ever issued.

Ground No. Seven—Error of the court below in not dismissing the prosecution for want of jurisdiction for the reason that no warrant of arrest was ever issued for appellant.

Ground No. Eight—Because the judgment is contrary to the law and the evidence.

IN THE CIRCUIT COURT OF GENERAL SESSIONS FOR McCORMICK COUNTY

AGREEMENT AS TO RECORD

We hereby agree that the within and foregoing shall constitute the case upon which the above appeal shall be heard by the Supreme Court.

J. Fred Buzhardt, Attorney for Respondent; Grover C. Powell, Attorney for Defendant-Appellant.

[fol. 21] IN THE SUPREME COURT OF SOUTH CAROLINA

TOWN OF McCORMICK, Respondent,

vs.

LESTER FOLLETT, Appellant

Appeal from McCormick County, E. C. Dennis, Judge

Grover C. Powell, of Atlanta, Georgia, and C. E. Cooley, of Anderson, for appellant.

J. Fred Buzhardt, of McCormick and Solicitor Jeff D. Griffith, of Saluda, for respondent.

OPINION—Filed August 26, 1943

AFFIRMED

STUKES, A.J.:

Appellant was convicted in the Mayor's Court of the Town of McCormick and sentenced to pay a fine of $50.00 or be confined in jail for twenty days for violation of a municipal ordinance prescribing an occupational license tax. The classification in which he fell is as follows: "Agents selling books, per day $1.00, per year $15.00."

The instances of violation to which the evidence referred were of the sales of a cloth bound book entitled "Children", and containing three hundred and sixty-eight pages of text with an elaborate index, purporting to be of an edition of three million copies, which cost the purchasers twenty-five cents each, but appellant contended that such price was a contribution. However, he admitted in testimony that he had no other income, living upon the profits of his sales or "contributions," and remitted to the publisher for the books after he disposed of them. The record indicates that he distributed other literature published by the Watch Tower Bible and Tract Society, Inc., of Brooklyn, New York, but the prosecution and conviction involved the book mentioned, "Children," and only it was given this Court as an exhibit on the argument of the case.

After conviction and sentence, defendant appealed to the Circuit Court of General Sessions upon the ground that the prosecution should have been dismissed because the ordinance as here applied is in violation of the Fourteenth Amendment of the Federal Constitution (extending

against the States the prohibitions of the Bill of Rights, the first eight amendments,) in that it restricts freedom of speech, freedom of press and freedom of worship. It was also urged at the trial that there was insufficient testimony of an actual sale or sales of the books within the corporate limits of the Town of McCormick, but that ground was abandoned upon appeal to the Circuit Court. It may be said, however, that the conviction was upon trial by jury and they had ample evidence before them to sustain their finding of sales.

The appeal came before the Honorable E. C. Dennis, presiding Judge, who heard the arguments thereon and took them under advisement for considerable time, afterward filing his order dated November 2, 1942, in which he sustained the conviction. The order is interesting and [fol. 22] demonstrates his close study of the record and general careful consideration of the case. From it appellant has brought his appeal to this, the Court of last resort of this State.

We agree with the trial Judge in his observation that our decision of State vs. Meredith, 197 S. C. 351, 15 S. E. (2d) 678, is not apposite. There it was found that the defendant was an itinerant minister of Jehovah's Witnesses and the sale by him of a book (apparently a different one from that involved here) in a rural community "was merely collateral to the main purpose in which he was engaged, which was to preach and teach the tenets of his religion," with no profit motive involved. The statute there invoked (the state hawkers and peddlers license law) was properly held inapplicable and the decision of constitutional questions was expressly avoided.

Here the appellant contended in evidence and argument that he is an ordained minister of the same sect and he introduced in evidence a certificate of such of the Watch Tower Bible and Tract Society but there is no doubt of the fact, established in evidence, that he earns his living by sale of the books, having no other occupation. This clearly takes him out of the rule of State vs. Meredith. It will hardly be contended that any other minister may make his living by the sale of books and, should he engage in his occupation in the Town of McCormick, not be subject to the moderate license of $15.00 per year prescribed by the ordinance under attack

It may be conceded that the book in question is a religious book. Tested by the tenets of other forms of the Christian religion with which we are familiar, it is full of heresies. But it purports to offer a plan of salvation of the human soul in life after death, based upon quotations from the Bible, so we conclude without difficulty that its publication and distribution come within the words, "exercise of religion," as they are used in the constitution. Appellant's sect undertakes to make a now unimportant and obscure distinction between religion and Christianity, and on the back of his certificate of ordination, in evidence, is the following statement with reference to the book: "It is not religious, but fills the sincere heart with contentment and hope. It is not a child's book, but is for adults and children as well. Here is a copy for you, and you may contribute twenty-five cents to help publish more like books. Read CHILDREN, rejoice and live."

It is interesting to note that the able and long-experienced Judge who heard the case on circuit sat as an Acting Associate Justice of this Court in State vs. Langston, (1940), 195 S. C. 190, 11 S. E. (2d) 1, a case affirming the conviction of other Jehovah's Witnesses of breaches of the peace. In his opinion for the Court he said: "In this State there are so many religious beliefs, so varied in what they teach and with such great differences, that one of the most fruitful, and yet fruitless, sources of argument is some theological question. It certainly cannot be said that there is not in this State an absolute freedom of religion."

For convenient reference the portion of the first amendment of the Federal Constitution, urged in opposition to the municipal ordinance under review, is here set out:

> "Congress (or a State or subdivision thereof—interpolated) shall make no law respecting an establishment of religion, or prohibiting free exercise thereof; or abridging the freedom of speech, or of the press. * * *"

It seems, and is, a very far cry from the import of the foregoing clause to the occupational license ordinance in question. Does application of the latter to appellant's sale of religious books violate the constitution? Answering similar questions has troubled other Courts. In 141 A. L. R., [fol. 23] beginning at page 538, is an enlightening annotation upon the subject following report of the five to four

decision in Jones vs. Opelika, and other cases, 316 U. S. 584, 62 S. Ct. 1231, 86 L. Ed. 1174, 141 A. L. R. 514. The following excerpts (pages 540 and 542) from the editorial comment found in the annotation appear to be a fair summary of the decided cases upon the subject up to that time:

> "The effect of the cases, taking them as a whole, seems to be that the sale, and also, presumably, the distribution without charge, of books and pamphlets dealing with religious subjects may be reasonably regulated as to time, place, and manner, without there being any invasion of religious freedom as protected by Federal and State Constitutions. Furthermore, transactions of sale and solicitation of sale of such literature may be subjected to reasonable and non-discriminatory taxation."

> "In nearly every case wherein the question has been presented, the view has been taken that a reasonable nondiscriminatory license tax imposed upon the sale of religious literature from door to door is not invalid as an invasion of religious liberty guaranteed by constitutional provisions."

But the Supreme Court of the United States "went up the hill and down again" in its decision of Jones vs. Opelika, supra, and vacated it in another equally closely divided decision. This action was coincidental with its decision of Murdock vs. Pennsylvania and seven other cases, 63 S. Ct. 870, (advance sheet No. 13, May 15, 1943), also by five to four. Does this last decision of that high Court, whose view is of course controlling upon the question involved, indicate reversal of the conviction and sentence of appellant? After most careful consideration, we do not think so. The facts of the Murdock case are materially unlike those of appellant's, although they appear to be members of the same religious sect. In view of what has been said of the case at bar it would perhaps be sufficient to point out that in the leading opinion in Murdock's case it was clearly said: "The cases present a single issue—the constitutionality of an ordinance which as construed and applied required religious colporteurs to pay a license tax as a condition to the pursuit of their activities." 63 S. Ct. at page 873. On the contrary, in the case in hand, we have the conviction of a resident of a town, the ordinance

of which is involved, who earned his living by the sale of books and did so within the town without obtaining the required license, which latter would have cost him $1.00 per day or $15.00 per year. He was literally "selling books," the words of the ordinance.

The Supreme Court in its majority opinion in *Murdock* had in contemplation an itinerant preacher, and expressly referred to such; but this case, so far as the record discloses, does not involve an itinerant. The dictionary definition, and the commonly accepted meaning, of an "itinerant" is one who travels from place to place. However, the appellant was selling books in the town of his residence. "Itinerant," used as an adjective by the Supreme Court, means: "Passing or traveling about the country; going or preaching on a circuit; wandering." Webster's New International Dictionary, Second Edition, Unabridged, G. & C. Merriam Company, 1939. It is certainly not a distortion of the facts (see 63 S. Ct. at page 874) in this case to find, which we do, and hold, as did the lower Courts, that appellant's occupation was that of selling books and not that of colporteur.

Furthermore, the Supreme Court based its acquittal of Murdock partly, at least, upon the ground that, quoting from 63 S. Ct. at page 876, "itinerant evangelists moving through a state or from state to state would feel immediately the cumulative effect of such ordinances as they [fol. 24] become fashionable." But there is no evidence in the record as has been pointed out, that appellant was "moving through a state or from state to state." In fact, as has been said, he was convicted for the violation of an ordinance of his home town. We think it clear that the reasoning in Murdock's case is inapplicable to this for the patent reason of the differing facts.

The majority of the Court there said (63 S. Ct. at page 874): "Situations will arise where it will be difficult to determine whether a particular activity is religious or purely commercial. The distinction at times is vital." Undoubtedly, this is such a case but we think the sales proven were more commercial than religious. The license was required for the selling of books, not for the spreading of religion.

The contentions with reference to the constitutional inhibition against abridging the freedom of speech or of the press, are plainly untenable and we think need not be dis-

cussed at length. The ordinance is not discriminatory and no effort was made in the Court below or here to show that it is unduly burdensome. In this connection see Grosjean vs. American Press Co., 297 U. S. 233, 56 S. Ct. 444.

Thus we find no violation of the First Amendment (or the Fourteenth) to the Federal Constitution in the application of the ordinance to appellant and his book selling. It is not, in our opinion, unconstitutional as so applied.

In appellant's extensive brief (eighty-four pages, exclusive of index and table of authorities cited) questions are argued which are based upon provisions of the South Carolina Constitution (of 1895) of similar import to those of the Federal Constitution which have been discussed. However, only the latter were relied upon in the trial Court and are, therefore, properly raised here. What we have said, we think, rightly disposes of appellant's contentions with respect to them.

The exceptions are overruled and the judgment of the Circuit Court affirmed.

Baker and Fishburne, JJ., and T. S. Sease and E. H. Henderson, Circuit Judges, AAJ., concur.

[fol. 25] In Supreme Court of South Carolina

[Title omitted]

Petition for Appeal, Statement, Assignments of Error and Prayer for Reversal

Petition for Appeal

Being aggrieved by the final decision of the Supreme Court of South Carolina, and the judgments of the courts below, in the above entitled cause, appellant herein prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

Statement

In this case the validity of an ordinance of the Town of McCormick, South Carolina is called in question as being unconstitutionally construed and applied to the facts and

circumstances of this case. The ordinance in question reads:

> "Be It Ordained by the Town Council of the town of McCormick in council assembled, and by the authority of the same.
>
> "Section—That the following license on business [fol. 26] occupation or professions within the corporate limits of the Town of McCormick, South Carolina:
>
> "Agents, selling books, per day $1.00, per year $15.00."

This ordinance was duly and properly passed by Town Council of McCormick, South Carolina. The ordinance is here drawn in question upon the ground that said ordinance as construed and applied by the courts of South Carolina, is repugnant to the First and Fourteenth Amendments to the United States Constitution.

The Supreme Court of South Carolina is the highest court in South Carolina to which an appeal could be taken under the provisions of the South Carolina law, and by its own statement it is the "court of last resort" in this case in South Carolina. The decision by the Supreme Court of South Carolina is in favor of the validity of the said ordinance. Therefore, in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2 [28 U. S. C. s. 354]), appellant respectfully shows this Court that the case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code [28 U. S. C. s. 344], a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

This cause came before the Supreme Court of South [fol. 27] Carolina on appeal from the McCormick County Court of General Sessions. The case originated in the Mayor's Court of the Town of McCormick, where appellant was tried before a jury. Appellant insisted in the trial court by motions duly and properly filed, that the judgment of conviction was erroneous and invalid for the following reasons: (1) that the activity complained of did not in any proper sense come within the terms of the ordinance which purported to tax "agents selling books" and (2) that if the ordinance was thus construed and applied to his activity it infringed and violated his rights of freedom of worship,

freedom of speech and freedom of press secured to him under the First and Fourteenth Amendments to the Constitution of the United States. The objections raised in the Circuit Court were the same and were reiterated finally in the Supreme Court of South Carolina, where his conviction for failure to pay the occupational tax in question was affirmed.

The Supreme Court of South Carolina rendered its opinion in this case on August 26, 1943, which opinion and judgment immediately became final. The opinion of the Supreme Court of South Carolina appears in the Record in its entirety.

Assignment of Error

Now comes appellant in the above entitled cause and files herewith, together with said petition for appeal, this assign-
[fol. 28] ment of error, and says that this is error committed by the courts below in the record and proceedings of the above entitled cause, and for the purpose of having same reviewed by the United States Supreme Court, makes the following assignment:

The Supreme Court of South Carolina erred in affirming the judgment of conviction against appellant because the ordinance in question is unconstitutional as construed and applied to appellant's activity because it abridges and burdens appellant's exercise of the rights of freedom of speech and press and freedom to worship Almighty God as His minister preaching from house to house, contrary to the First and Fourteenth Amendments to the United States Constitution.

Prayer for Reversal

For and on account of the above errors, appellant prays that the said judgment of the Supreme Court of South Carolina hereinabove described and entitled, be reviewed by the Supreme Court of the United States and reversed with a judgment rendered in favor of appellant allowing costs.

Grover C. Powell, by Hayden C. Covington, Attorneys for Appellant.

[fol. 29] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

ORDER ALLOWING APPEAL—October 15, 1943

Appellant in the above entitled suit and cause has prayed for allowance of an appeal in this suit and cause to the Supreme Court of the United States from the judgment made and entered by the Supreme Court of South Carolina on the 26th day of August, 1943, overruling appellant's bill of exceptions tendered as to the complaint filed and subsequent proceedings had thereunder in the Mayor's Court of the Town of McCormick, and the McCormick County Court of General Sessions under the ordinance of the town of McCormick drawn in question in said cause there titled, to wit, Town of McCormick, South Carolina v. Lester Follett.

It appearing that the appellant in his bill of exceptions and in said cause before argument attacked the ordinance in question on the grounds, as contended by appellant, that it unreasonably abridges freedom of speech, freedom of press and freedom to worship Almighty God as His min-
[fol. 30] ister, contrary to the First and Fourteenth Amendments to the federal constitution, which contention was overruled by the decision and judgment of the said Supreme Court of South Carolina previously rendered herein; and,

It appearing that appellant has presented and filed a petition for appeal to the Supreme Court of the United States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) months from date that said judgment of the Supreme Court of South Carolina became final, viz., August 26, 1943, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It Is Now Here Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of South Carolina, and the said judgment of the McCormick County Court of General Sessions and the said judgment of the Mayor's Court of the Town of McCormick, South Carolina, in aforesaid cause as pertains to the conviction under the complaint filed under the ordinance of the town of McCormick here in question, as provided by law; and

It Is Further Ordered that the Clerk of the Supreme Court of South Carolina shall prepare and certify to the transcript of the record, proceedings and judgment in the said cause and transmit the same to the Clerk of the Su-
[fol. 31] preme Court of the United States together with all exhibits in original form as designated by praecipe filed with him, so that he shall have the same in said Court within twenty (20) days from date.

And It It Further Ordered that security for costs on appeal be fixed in the sum of Five Hundred ($500.00) Dollars and appellant having presented an undertaking in the sum of Five Hundred ($500.00) Dollars executed by the National Surety Corporation, it is further ordered that such undertaking be and the same is hereby approved and ordered filed.

Dated, October 15, 1943.

D. Gordon Baker, Senior Active Asspciate Justice, Acting Chief Justice Supreme Court of the State of South Carolina.

[fol. 32] Citation in usual form omitted in printing.

[fols. 33-34] Cost Bond on Appeal for $500.00 approved Oct. 15, 1943, omitted in printing.

[fols. 35-37] In Supreme Court of South Carolina

[Title omitted]

[fol. 38] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 39] United States Supreme Court

[Title omitted]

Statement of Point To Be Relied Upon—Filed November 15, 1943

Comes now the appellant in the above-entitled cause and states that the point upon which he intends to rely in the

Supreme Court of the United States in this cause is as follows:

The ordinance is unconstitutional as construed and applied to appellant's activity because it abridges and burdens appellant's exercise of the rights of freedom of speech and press and freedom to worship Almighty God as His minister preaching from house to house, contrary to the First and Fourteenth Amendments to the United States Constitution.

Grover C. Powell, Hayden C. Covington, by Hayden C. Covington, Attorneys for Appellant.

[fol. 40] UNITED STATES SUPREME COURT

[Title omitted]

DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed Nov. 29, 1943

To the Clerk of the Supreme Court of the United States:

You will please print each of the documents designated below, contained in the record of the above captioned case now on file with your office, forwarded to you by the Clerk of the Supreme Court of South Carolina, to wit:

1. Opinion of the Supreme Court of South Carolina.
2. Transcript of record before the Supreme Court of South Carolina.
3. Petition for appeal, assignment of errors, and prayer for reversal.
4. Order allowing appeal.
5. Citation.

Dated, November 27, 1943.

Hayden C. Covington, Attorney for Appellant.

[fol. 41] PROOF OF SERVICE:

STATE OF NEW YORK,
County of Kings, ss:

Hayden C. Covington, being duly sworn, says that he is attorney for appellant in the above entitled cause; that he served a copy of the within Designation of Parts of the

Record to be Printed upon counsel for appellee by depositing said copy, securely enclosed in a sealed wrapper addressed to the City Attorney, McCormick, South Carolina, and with postage fully prepaid therefor, in a United States Post Office in the City of New York on the date hereinafter written.

Hayden C. Covington.

Sworn to and subscribed before me this 27th day of November, 1943.

William K. Jackson, Notary Public, Kings County. Kings Co. Clk's No. 119, Reg. No. 62-J-5. Commission expires March 30, 1945. (Seal.)

[fol. 42] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—December 13, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

Endorsed on cover: File No. 47,979, South Carolina, Supreme Court. Term No. 486. Lester Follett, Appellant, vs. Town of McCormick, South Carolina. Filed November 15, 1943. Term No. 486, O. T. 1943.